land prior to this case; and, from such examination as we have been able to make, no case involving the point has ever been reported in this country. The reasons advanced, however, by the learned judges, whose opinions are reported—[the opinions of Lords BLACKBURN, WATSON and BRAMWELL, who concurred with Lord SELBORNE, L. C., are, on account of want of space, omitted]—are so clear and conclusive as to render the citation of authorities almost superfluous, and there would seem to be no reasonable doubt as to the correctness of their judgment.

MARSHALL D. EWELL.

Chicago.

RECENT AMERICAN DECISIONS.

Supreme Court of Iowa.

CARTON & CO. *v.* ILLINOIS CENTRAL RAILROAD CO.

An act of the state legislature, whose object and purpose is to control and regulate the shipment of freight to points in other states, is in violation of article 1, sect. 8, of the Constitution of the United States, as being legislation on interstate commerce, a subject which is in its nature national, and requiring the exclusive legislation of Congress.

An interstate contract of shipment, entered into by a common carrier, is an entire contract, and the laws of the state wherein it is made, so far as they attempt to regulate interstate commerce, do not enter into it as a part of the contract, being repugnant to the Federal Constitution [BECK, J., dissenting].

A contract is subject to the laws of the state wherein it is made and which are applicable thereto.

A state may regulate charges on shipments of goods, by statutes not in conflict with the Constitution of the United States as regulations of commerce, and in the absence of any legislation by Congress upon the subject, such laws cannot be regarded as an encroachment on the authority of the general government.

Such regulations of commerce only as impose burdens and restrictions are forbidden to the state by the Constitution of the United States, but laws which aid in securing expeditious and cheap transportation, and which remove burdens, impediments and restrictions imposed on commerce by common carriers through unnecessary delays, and by their unreasonable and unjust exactions and discriminating charges, are not regulations of commerce within the contemplation of the Constitution of the United States.

APPEAL from Hardin Circuit Court.

This is an action to recover certain alleged excessive freight charges paid by the plaintiff to the defendant for transporting grain from Ackley, Iowa, to Chicago, Illinois. The cause was tried in the court below without a jury, and upon an agreement as

to the facts, judgment was rendered for the defendant for costs. Plaintiffs appealed.

Brown & Corney, for appellants.

John F. Duncombe, for appellee.

ROTHROCK, J.—It appears from the agreed statement of facts that between the eleventh day of April A. D. 1875, and the fourteenth day of April 1876, the plaintiffs delivered to the defendant at Ackley, Iowa, to be shipped to Chicago, Illinois, through defendant, 129 car loads of wheat, and the defendant fixed the price and charged for the freight thereon from Ackley to Chicago, 37 cents per 100 pounds, or $74 per car load of 20,000 pounds; and between April 14th 1876, and March 11th, 1878, 120 cars more, for which the defendant received and charged for shipment the same rate. The grain was loaded at Ackley in cars furnished by the defendant and carried through in bulk to Chicago in a continuous shipment. All of the cars were billed through from Ackley, Iowa, to Chicago, Illinois, and the defendant fixed the rate of freight thus charged, and gave plaintiffs through shipping receipts to Chicago. It is claimed that the freight thus charged, and paid by the plaintiffs, was in excess of that authorized by the laws of Iowa at that time in force; that the distance from Ackley by defendant's road to Dubuque, on the Iowa state line, is 132 miles, and the distance from Dubuque to Chicago by defendant's line is 202 miles, making a total distance through both states of 334 miles, and that the rate of freight fixed by the law of Illinois was at that time less than the rate fixed by the statute of Iowa. Damages are claimed for the difference between what was authorized by the law of Iowa to be charged for the transportation for the whole distance; also, for attorney's fees for prosecuting the action.

It is claimed by counsel for the defendant that the law of Iowa then in force [being chapter 68 of the Acts of the Fifteenth General Assembly], by its plain language and meaning, had no application to contracts made for the transportation of freight into other states. Section 3 of that act, so far as applicable to this case, is as follows: "The tariff of rates established in the following schedule shall be considered the basis on which to compute the compensation for transporting freight, goods, merchandise or property over any kind of railroad within this state. * * *" Some of us think this

language excludes contracts for the transportation of freights to points without the state. But as the plaintiffs claimed that these were contracts made in Iowa for through shipments to Chicago, and that by taking the law of Illinois to the law of Iowa, thus making it one continuous haul, the rate for the continuous haul, being in excess of that authorized by the law of Iowa, may be recovered back. We think it is not necessary to put a construction upon the law of this state in this regard, but rest our decision upon another ground.

It is claimed by the defendant that whatever construction may be put on the law of this state, it can have no application to shipments of freight from this state to other states, because state legislation of that character is void, as being contrary to article 1, sect. 8, of the Constitution of the United States, which confers upon Congress the power "to regulate commerce with foreign nations, and among the several states." Now, if this position be correct, it is needless to enter into a discussion of all the questions so elaborately and ably discussed by counsel in this case. If the law of Iowa, conceding that it contemplates the control or regulation of shipments of freights to other states, is in that particular void as being an infraction of the Federal Constitution, it cannot be enforced, and the defendant was not bound to obey it, and could fix its own freight tariff, and the plaintiffs cannot recover for a violation of the statute, whatever other rights they may have.

It is not claimed that the fixing of rates of freight shipped from one state into another is not a regulation of commerce. "Any regulation of the transportation of freight upon the high seas, the lakes, the rivers, or upon the railroads or other artificial channels of communication, is a regulation of commerce itself:" *City of Council Bluffs* v. *K. C., St. J. & C. B. Railroad Co.*, 45 Iowa 338. This has been repeatedly held by the Supreme Court of the United States: *Reading Railroad Co.* v. *Pennsylvania*, 15 Wall. 232; *Passenger Cases*, 7 How. 283; *State of Pennsylvania* v. *Wheeling Bridge Co.*, 18. Id. 421; *Gibbons* v. *Oyden*, 9 Wheat. 1.

There is a line of cases determined in the Supreme Court of the United States which hold that it is competent for the states, in the absence of legislation by Congress, to legislate respecting interstate commerce, but those cases have been such as relate to bridges or dams across streams wholly within a state, police laws relating to

pilots of vessels, health laws, and the like. See *Cooley* v. *Board of Wardens*, 12 How. 299; *Gilman* v. *Philadelphia*, 3 Wall. 713. But that court has always held that the power to enact laws upon subjects in their nature national, and not merely local, is exclusively with Congress. In *Cooley* v. *Board of Wardens*, *supra*, it is said: "Whatever subjects of this power are in their nature national, or admit of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.

That the act of this state, assuming that its object and purpose was to control and regulate the shipments of freight to other states, is of the character last defined, appears to be very clear, and we are not without authority upon this question and from a source which so far as questions involving the construction of the Federal Constitution are involved, are binding upon this court and all other courts in the Union.

The legislature of the state of Pennsylvania enacted a law imposing a tax upon freight taken up within the state and carried out of it, or taken up without the state and carried within it. The Pennsylvania Railroad Company refused to pay the tax, upon the ground that the law was unconstitutional and void, being in conflict with the Constitution of the United States which ordains that "Congress shall have power to regulate commerce with foreign nations and among the several states." In *The State Freight Tax*, 15 Wall. 232, involving the validity of this act, it was held that the tax imposed thereby was upon the freight carried, and that it was a regulation of interstate transportation or commerce among the states. The court in that case say: "If, then, this is a tax upon freight carried between states, and a tax because of its transportation, and if such tax is in effect a regulation of interstate commerce, the conclusion seems to be inevitable that it is in conflict with the Constitution of the United States." It is there further said: "The rule has been asserted with great clearness, that whenever the subjects over which a power to regulate commerce is asserted are in their nature national, or admit of one uniform system or plan of regulation, they may justly be said to be of such a nature as to require exclusive legislation by Congress. Truly, transportation of passengers, or merchandise through a state, or from one state to another, is of this nature."

In *Henderson* v. *Mayor of New York*, 92 U. S. 272, the following language is used: "It is said, however, that under the decisions of this court there is a kind of neutral ground, especially in that covered by the regulation of commerce, which may be occupied by the state, and its legislation be valid, so long as it interferes with no act of Congress or treaty of the United States. Such a proposition is supported by the opinions of several of the judges in *The Passenger Cases;* by the decisions of this court in *Cooley* v. *Board of Wardens*, 12 How. 299, and by the cases of *Crandall* v. *Nevada*, 6 Wall. 35, and *Gilman* v. *Philadelphia*, 3 Id. 713. But this doctrine has been always controverted in this court, and has seldom if ever been stated without dissent. These decisions, however, all agree that under the commercial clause of the Constitution, or within its compass, there are powers which, from their nature, are exclusive in Congress, and in the case of *Cooley* v. *Board of Wardens*, it is said that "whatever subjects of this power are in their nature national, or admit of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress."

In the case of *Railroad Co.* v. *Maryland*, 21 Wall. 456, it was determined that the charter of the Baltimore and Ohio Railroad Company for constructing and operating a branch railroad from Baltimore to Washington, upon a stipulation contained in the charter that the company should pay the state of Maryland one-fifth of the amount of money received for the transportation of passengers, was not an infraction of the Federal Constitution as being a regulation of interstate commerce. It is there said: "The exercise of power on the part of the state is very different from the imposition of a tax or duty upon the movements or operations of commerce between the states. Such an imposition, whether relating to persons or goods, we have decided the states cannot make, because it would be a regulation of commerce between the states in a matter in which uniformity is essential to the rights of all, and therefore requiring the exclusive legislation of Congress." In that case the state of Maryland in granting the charter, expressly reserved the right to part of the earnings of the road, and the power to do so was upheld upon the principle that if the state had itself built the road and operated it, it would have been entitled to its earnings.

The cases of *Munn* v. *Illinois*, 94 U. S. 113; *C., B. & Q. Railroad*

Co. v. *Iowa*, Id. 155, and *Peik* v. *C. & N. W. Railroad Co.*, Id. 164, do not appear to us to sanction the validity of acts of the state legislature regulating the transportation of freight and passengers between the states. They merely determine the power of the state to fix reasonable warehouse charges, and reasonable charges for transportation of freight within the boundaries of the states respectively, and that where such power is exercised, although it may incidentally affect commerce between the states, yet the laws of the states are not regulations of interstate commerce because of such incidental results. That it was not intended in those cases to approve legislation like that under consideration in this case, it appears to us is conclusively shown by the reasoning in the later cases of *Hall* v. *DeCuir*, 95 U. S. 485, and *Railroad Co.* v. *Husen*, Id. 465.

It is urged with great earnestness that these contracts of shipment are entire contracts, and having been entered into in Iowa, the laws of this state entered into and become a part of the contracts, and the statute fixing the rate governed the price for the entire distance. This rule is, no doubt, correct when applied to a valid enactment of the legislature of the state where a contract is entered into, and no one doubts the power of a common carrier to bind itself to ship freight beyond state lines, or even to foreign countries and beyond the terminus of its line of transportation. Under such a contract it is everywhere held that the carrier is bound to perform his contract and is liable for loss by negligence. But this position of counsel, it seems to us, begs the question, because if the law of Iowa, under consideration, is an unauthorized regulation of interstate commerce, it cannot enter into and become part of any contract. This position of counsel forcibly illustrates the correctness of our conclusions, that the law in question, if held to have been intended to operate upon interstate traffic, is directly and palpably contrary to the Constitution of the United States. If the law entered into and become part of the contract of shipment we would have a law of Iowa which would control and regulate the transportation of freight not only to the remotest parts of the states and territories of this country, but extending to all nations of the earth to which lines of common carriers extend, and to which local carriers may undertake to transport goods. That such legislation is national in its character, it seems to us, must be conceded.

If we are correct in these views there is but little more necessary

to be said in this case. The plaintiffs claim to recover because the amount of freight money exacted by the defendant was in excess of the rate fixed by the law of Iowa. The contract of shipment was an entirety. It cannot be severed and made to apply partly to the shipment in Iowa and partly to that in Illinois. It was the right of the defendant to disregard any laws which sought to regulate shipments to points without the state, and make its own contracts. Having done so, the plaintiffs cannot recover under any state law, simply because it is void, as being repugnant to the Federal Constitution. Whether the plaintiffs are entitled to any relief, independent of the statute, we do not determine, because that question is not in this case. Affirmed.

BECK, J., dissenting.—I am unable to concur in the arguments and conclusions announced in the preceding opinion of the court prepared by Mr. Justice ROTHROCK. The case is one of great importance, as the decision affects the interest of all the people of the state. This consideration has stimulated me in its careful examination with the purpose of preparing an extended discussion of the doctrines which, in my opinion, should control the decision of the important questions involved in the case. But I am unable, within the limited time which other judicial duties permit me to devote to the case, to carry out my purpose, and I am compelled to limit myself to a brief statement of the principles upon which I base my dissent to the opinion of the majority of the court.

It is shown by the record before us that the defendant received the grain shipped by plaintiffs for transportation to the city of Chicago. A contract was thus entered into by the defendant for the carriage of the grain from Ackley to Chicago. This contract was made in Ackley, and is therefore subject to the laws of the state applicable thereto.

It is competent for the state to enact the statute in question unless it should be found to be in conflict with the Constitution of the United States as a regulation of commerce. The statute is not in conflict with the Federal Constitution, for the following reasons:

Conceding the statute has the effect of regulating commerce, it is enacted in the exercise of a power which is vested concurrently in the state and national governments; and as it is not in conflict with any law of the United States, and as Congress has not enacted any statute upon its subject, it cannot be regarded as an encroach-

ment upon the authority of the general government. Until Congress assume the exercise of authority over the subject of the statute in question, the state is free to legislate upon it.

In my opinion, regulations of commerce which impose burdens and restrictions thereon only, are forbidden to the states by the Constitution of the United States. The states are free to enact all laws which will aid in securing the expeditious and cheap transportation of property used in the commerce of the country. Of this character are statutes providing for the construction of the mediums of transportation of property, for its protection while in transit, and for the protection of the means of transportation used by common carriers. Enactments prescribing the duties and obligations of carriers are of the same character and class. It must be remembered that railroads do not constitute commerce. They are means used by commerce. The corporations operating them are common carriers employed in the commerce of the country. Burdens, impediments and restrictions may be imposed on commerce by these common carriers. This may be done by unnecessary delays, and by unreasonable and unjust charges for carrying goods and the like. Statutes which remove burdens and restrictions imposed in this way upon commerce and which protect it from unjust exactions by common carriers, are not regulations of commerce within the contemplation of the Constitution of the United States. The statute of the state brought in question in the case is of this character. It was intended and operated to protect and stimulate commerce by preventing oppressive and discriminating charges for the transportation of property used in the commerce of the country.

These conclusions, in my opinion, are based upon doctrines well established by decisions of the United States Supreme Court and of this court.

The right of the state to regulate railway charges has not been admitted in all cases. Thus it has been decided that the power of a railroad company to charge for the transportation of passengers and freight is one essential to the enjoyment of the franchise and must be presumed to have been the consideration for which the corporators accepted the charter, invested their money and assumed the obligations imposed on them; and the power to adjust its tariff of charges by its own officers, according to their views of the necessities of business and of justice to the public, without any reservation in the charter of legislative supervision or control over them, being a part of the franchise as it was granted, an act of the legislature which assumes for the state the right to regulate what under the charter was granted as an absolute discretion to the corporation, viz.: the right to adjust its tariff of charges for the carriage of passengers

and freight, undoubtedly impairs the obligation of the contract in the sense of the constitutional prohibition, and is inoperative and void: *P. W. & B. Railroad Co.* v. *Bowers*, 4 Houst. 507. See also *Sloan* v. *Pacific Railroad Co.*, 61 Mo. 24. But in this case it was decided that, regardless of legislation, the company was responsible for its breach of duty as a common carrier in charging exorbitant freights or making unjust discriminations; and see *Attorney-General* v. *Railroad Company*, 35 Wis. 428. And *Ruggles* v. *People*, 91 Ill. 256, holds that an express grant of power in a charter of a railway company to fix the rates of toll to be charged and to alter and change the same, does not confer unlimited power, but only the right to charge reasonable rates, and what is a maximum rate may be fixed by the statute.

Other cases, constituting the clear weight of authority, affirm the constitutionality of regulations as to railway rates, and such right of regulation by the state appears now to be firmly established. Especially when the legislature, in granting the companies their charters, reserved the right to repeal or alter them: *Shields* v. *Ohio*, 95 U. S. 319; *Peik* v. *C. & N. W. Railroad Co.*, 94 Id. 165; *Munn* v. *Illinois*, 94 Id. 113; *Stone* v. *Wisconsin*, 94 Id. 183; *American Coal Co.* v. *Consol. Coal Co.*, 46 Md. 15; *M. & M. Railroad Co.* v. *Steiner*, 61 Ala. 559; *V. & M. Railroad Co.* v. *F. Railroad Co.*, 9 Cush. 369; *C. & A. Railroad Co.* v. *Peoples*, 67 Ill. 11; *People* v. *Ruggles*, 91 Id. 256; *Attorney-General* v. *Railroad Companies*, 35 Wis. 428; *Hinckley* v. *C. M. & St. P. Railroad Co.*, 38 Id. 196.

Such regulation by the state is not prohibited by sect. 8, art. 1, United States Constitution, which gives power to congress to regulate commerce between the states and with foreign nations, nor by sect. 9, art. 1, United States Constitution, which prohibits preferences to the ports of one state over those of another. This provision applies only to th federal government: *Munn* v. *Illinois*, 94 U. S. 113.

The legislature, in prescribing maximum rates of freight charges, may affix a money penalty—*e. g.*, a fine of $1000—for violating the statute fixing the rates; but no opinion was expressed, whether the legislature had power to affix a forfeiture of the company's franchises as a penalty: *St.* v. *W. & St. P. Railroad Co.*, 19 Minn. 434.

Statutes regulating and limiting rates may classify corporations and establish different rates for different classes, provided the same regulations are made for all in a like situation, and such statutes do not conflict with state constitutional provisions requiring uniformity and equality in general laws: *McAunich* v. *M. & M. Railroad Co.*, 20 Iowa 338; *C., B. & Q. Railroad Co.* v. *Iowa*, 94 U. S. 155.

The legislature may part with its right of taxation and *a fortiori* with its right to regulate rates: *Sloan* v. *Pacific Railroad Co.*, 61 Mo. 24.

And where railway companies are exempt by their charters from state regulation as to rates, they may relinquish their right of exemption, or lose it by consolidation with, or merger in, other companies not so exempt: *Peik* v. *C. & N. W. Railroad Co.*, 94 U. S. 164; *Shields* v. *Ohio*, 95 Id. 319; *C., H. & D. Railroad Co.* v. *Cole*, 29 Ohio St. 126.

So, if a railroad corporation, though originally chartered without restrictions as to the right to fix tolls, accepts a limitation or restriction of such powers, on a valuable consideration, *e. g.*, as one of the conditions on which it receives aid from the state, such limitation inheres in its organic law precisely as if originally incorporated therein; and a new corporation, formed by those purchasing its property, and succeeding only to the rights of the old, is bound by such limi-

tations: *M. & M. Railroad Co.* v. *Steiner*, 61 Ala. 559.

It has been decided that the rate on freight "carried over the whole line of its road," which furnishes the basis for the additional fifty per cent. allowed by the regulating act for the transportation of "local freight," is the rate charged on freight taken on at one terminus and discharged at the other; and not the rate for freight brought from or carried to a point beyond the termini of the road.

The rate which furnishes the basis on which local freight charges must be graduated is the rate prevailing at the time of shipment; and rates at any particular time in the past furnish no reliable guide for ascertaining present rates: *M. & M. Railroad Co.* v. *Steiner*, 61 Ala. 559.

A statute providing that railroad companies "may, for the transportation of local freight demand and receive, not exceeding fifty per cent. more than the rate charged for the transportation of the same description of freight, over the whole line of its road," does not authorize the addition of fifty per cent. on the charge over the whole road, irrespective of the distance, the freight may be carried, but only an additional fifty per cent. more per mile, for the distance local freight is carried, than the per mile rate charged on goods carried over the whole line: *M. & M. Railroad Co.* v. *Steiner*, 61 Ala. 559.

By an Act of Assembly it was provided that "rates for toll and transportation may be regulated in such manner as the company may deem most advisable; provided, that the maximum charges for toll and transportation shall not exceed four cents per mile for freight." A subsequent act amended the proviso so as to read "average charges for toll and transportation." It was held that the company might impose more than four cents per mile on some charges, so that by making others less the general average should not exceed four cents; that the adjustment of tolls was not required to be made so as to bear equally on each individual, but was to be made between the whole road and the entire public who used it; that the requirement of the statute was satisfied by fixing different charges per mile for different kinds of freight; that the company may discriminate in favor of longer distances; that "average charges" are charges at a mean rate ascertained by dividing the entire receipts by the whole quantity of tonnage, reduced to a common standard of tons moved one mile; that the charges against the plaintiff, averaged by the whole amount of business of the company, were less than four per cent.; by that done for him alone they were more than five per cent., and that the former was the proper estimate, and the charges were not excessive: *Hersh* v. *N. C. Railroad Co.*, 74 Penn. St. 181.

In Wisconsin, a railway company cannot, by showing that the amount charged was no more than a reasonable compensation for the service rendered, recover more than the maximum rate fixed by law: *C., M. & St. P. Railroad Co.* v. *Ackley*, 94 U. S. 179.

A statutory provision that no reduction shall be made in the rates of fare and charges for freight allowed to railway companies organized under such statute, unless where their net profits for the previous ten years amount to ten per cent. on their capital, is in the nature of a contract and binding on the state. There are railway companies who have not relinquished their right to be governed by such statutory provision, and not having realized a net profit of ten per cent. on their capital for the ten years next preceding the enactment of the statute they are not bound by provisions of the act reducing their rates of freight or fare: *Iron Railroad Co.* v. *Lawrence F. Co.*, 29 Ohio St. 208.

The grounds of the right of the government to regulate the prices of transportation are several:

I. PUBLIC USE.—The devotion of the property of a person or corporation to a public use warrants governmental regulation of such use and the prices chargeable for it. See Lord HALE, De Jure Maris, 1 Harg. Law Tracts 6; *Blot* v. *Stennett*, 8 T. R. 606; *Aldnutt* v. *Ingles*, 12 East 527; *Mobile* v. *Yuille*, 3 Ala. (N. S.) 140; *Munn* v. *Illinois*, 94 U. S. 113, and cases *supra*.

What is a public use of property? Chief Justice WAITE says, somewhat vaguely, that "property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large;" and he continues, "when, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but so long as he maintains the use, he must submit to the control: *Munn* v. *Illinois*, 94 U. S. 113. He held that the business of a common carrier was so "affected with a public interest" as to be, on this ground, subject to legislative regulation. So also were held ferrymen, hackmen, wharfingers, bakers, millers, warehousemen and innkeepers.

FIELD, J., dissented; said he, "there is no business or enterprise involving expenditures to any extent which is not of public consequence, and which does not affect the community at large. There is no trade or manufacture, and no avocation which does not, in a greater or less extent, affect the community and in which the public has an interest in the sense used by the court:" *Stone* v. *Wisconsin*, 94 U. S. 181, 185.

"The public," said he again, "is interested in the manufacture of cotton, woollen and silken fabrics, in the construction of machinery, in the printing and publication of books and periodicals, and in the making of utensils of every variety, useful and ornamental; indeed there is hardly an enterprise or business engaging the attention and labor of any considerable portion of the community in which the public has not an interest, in the sense in which that term is used by the court:" *Munn* v. *Illinois*, 94 U. S. 141; and he thought the principle of the court "subversive of the rights of private property." Whether or not this dissent rests upon solid foundations, the decisions of the courts pretty clearly establish the fact that in the eye of the law the property of railways is devoted to the use of the public, is "affected with a public interest," and that, therefore, its use and the prices chargeable therefor are subject to regulation by the state.

The Supreme Court of Texas, speaking of the distinction between devoting property to a private and to a public use, decided that a business, which is strictly *juris privati*, does not become *juris publici*, by reason of the fact that those carrying it on have become incorporated by the legislature, nor merely by reason of the extent of such business. If the magnitude of a particular business is such, and the persons affected by it are so numerous that the interest of society demands that it should be relegated to the class of occupations *juris publici*, the exercise of such power is for the legislature (if not restrained by the Constitution) and not for the judicial department. In the absence of legislation a person who has not put his property and services to public use, by the character of the business in which he is engaged, does not do so by reason of combination with others in a like business, though he is enabled thereby to exact from those who may employ him unreasonable and extortionate charges for services rendered: *Ladd* v. *Southern C. P. & M. Co.*, 12 Leg. News 418.

II. USE OF PUBLIC PROPERTY.—

The property of railway companies is largely public, and belongs to the government, by which it is, therefore, subject to regulation. For example, a railway company's franchises, its right to construct and to operate its railroad belongs to the government. It is only held by the railway corporation in trust for the public benefit. It is in all cases valuable, and in many instances enormously valuable. Under it the companies condemn and take private property for their line. The company is as to this right the agent of the government conferring it, and is bound as much as its principal to use the right for the common welfare. Therefore, as the agent of the government, possessing and using public property, a railway company is subject to regulation.

III. MONOPOLY OR COMBINATION. —When any person or corporation has obtained the sole power of dealing in any species of goods, or of dealing with a country or market, by engrossing the articles in the market, or by license from the government, the latter has always asserted and exercised its right to regulate and control such person or corporation so as to stop and prevent extortion and oppression. "A monopoly, it is said, hath three incidents mischievous to the public: 1. The raising of the price; 2. The commodity will not be so good; 3. The impoverishing of poor artificers:" *Darcy* v. *Allen*, 11 Coke 84. And monopolous grants were decided to be illegal. In 1624 they were abolished by statute in England. It would be strange if the legislature had the power to abolish monopolies but could not regulate them. The greater power certainly includes the less. As to points with which a single railroad is the only means of communication, such railroad is an undoubted monopoly. And where several railways run to a city, a monopoly is established of railway transportation to that city where they combine and form "pools," or "freight associations." These "pools" or similar combinations are clearly illegal; and as monopolies, any railway or combination of railways, are subject to legislative control.

But railway regulative legislation is at present insufficient and defective. Only about fifteen of the states have attempted it to any great extent, and their legislation reaches only to domestic traffic. The larger portion of railway business, interstate traffic, is subject to no regulation. The state governments cannot regulate it. The national government has not done so. Nor are all the subjects proper for regulation been provided for, even in those states which have legislated most vigorously against railways. Legislation for the prevention of strikes by railway employees, and the consequent stoppage of railway facilities, has not yet been attempted. Nor are there any regulations as to the management and funding of the vast and rapidly increasing railway debt. Nor is there any system of inspection of railway equipments and appliances. Such inspection should be made by the state. It would prevent such disasters as that at Ashtabula bridge—and in passing it may be noted that bridge accidents during the year 1881 were double in number those of previous years. Safety to persons and property in transit over railways—fairness and evenhanded justice to the public that patronizes railways, demand their reasonable control and regulation by state and federal governments. It is hoped that such regulation will not be postponed.

ADELBERT HAMILTON.

Chicago.